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No. 71-333

In the Supreme Court of the United States

OCTOBER TERM, 1971

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

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This is an action involving a claim against the Check Forgery Insurance Fund under 31 U.S.C. 561, 564 and 31 C.F.R. 359.0-359.4.

On April 28, 1961, the Superior Court of California appointed John C. Houlihan conservator of the estate of Sarilla Whitlock, an invalid, and required Mr. Houlihan to post a bond of $150,000. Based on Mr. Houlihan's representation that he would deposit certain of Mrs. Whitlock's U.S. Savings Bonds with

the United California Bank, "subject to withdrawal *only* upon [further] order of this Court," the court reduced the conservatorship bond to $50,000 (Pet. App. ii).

Mr. Houlihan, however, did not deposit the bonds, and in 1963 and 1964, without either court approval or Mrs. Whitlock's knowledge, he presented six of the bonds for redemption, requesting that the proceeds be mailed to a former address of Mrs. Whitlock. Pursuant to his instructions, four Treasury checks, payable to Mrs. Whitlock, were issued and mailed to the address where they were obtained by Mr. Houlihan without Mrs. Whitlock's knowledge. All the checks were endorsed by Mr. Houlihan, who signed Mrs. Whitlock's name. On two of the checks, Mr. Houlihan also signed his own name below that of Mrs. Whitlock's simulated signature. Three of these checks were then deposited in the petitioner bank. All four checks were presented to the Treasurer of the United States for payment after having been endorsed by the presenting bank (Pet. App. iii-iv).

In 1965, Mrs. Whitlock died and on September 7, 1966 Mr. Houlihan pleaded guilty to felony grand theft against Mrs. Whitlock's estate. By letter of March 6, 1967, the co-administratrices of the estate filed a claim with the Treasurer of the United States against the Check Forgery Insurance Fund, contending that the estate was entitled to be reimbursed for all money appropriated by Mr. Houlihan. When the Treasurer and the Comptroller General rejected this

claim, the estate filed a petition for review with the United States Court of Claims. The court entered summary judgment in favor of the co-administratrices against the United States and in favor of the United States against the presenting banks, including petitioner, which the United States had impleaded as third-party defendants.

Petitioner seeks review of that portion of the decision below which granted the United States judgment against the third-party defendant banks. The court's decision, however, based upon its conclusion that Mr. Houlihan lacked authority under California law to redeem the bonds and to cash the checks issued in redemption thereof (Pet. App. vi-xii), was correct. Moreover, the scope of a conservator's powers under California law is not a matter warranting review by this Court. *Cf. Estate of Spiegel* v. *Commissioner of Internal Revenue*, 335 U.S. 701, 706-708.

Petitioner's reliance on *Oquendo* v. *Federal Reserve Bank*, 98 F. 2d 708 (C.A. 2), certiorari denied, 305 U.S. 656, for the proposition that Houlihan's endorsement was not a forgery is misplaced. In *Oquendo*, unlike the instant case, the attorney had specific authority to endorse all checks received by his guardian. Based on that broad grant of power, the court there held the attorney's signature did not constitute a forgery.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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